

STATE OF INDIANA )  
 ) SS:  
COUNTY OF PORTER )

IN THE PORTER CIRCUIT COURT

CAUSE NO. 64D02-0306-PL 4730

STATE OF INDIANA,  
  
Plaintiff,  
  
v.  
  
ABILITY COMPUTERS, INC.  
  
Defendant.

)  
) File Stamp  
) Pursuant To  
) TRIAL RULE 5(E)  
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**FILED**  
IN OPEN COURT

MAY 20 2003

*Sale Brewer*  
CLERK PORTER CIRCUIT & SUPERIOR COURT

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. The Defendant, Ability Computers, Inc., ("Ability"), is an Indiana corporation and at all times relevant to this complaint conducted business via the Internet, with a principle place of business located at 3287 Willowcreek Road, Portage, Indiana.

**FACTS**

3. At least since December 20, 1999, the Defendant has offered items for sale via the Internet.

**A. Allegations regarding Ron Goers.**

4. On or about August 2001, the Defendant entered into a contract with Ron Goers ("Goers") of Palmyra, New York, wherein the Defendant agreed to sell Goers computer components.

5. The Defendant partially shipped the computer components, but failed to ship a power supply, for which Goers paid Twenty-Five Dollars (\$25.00).

6. The Defendant represented that it would refund the money for the power supply within a reasonable period of time.

7. The Defendant has yet to either issue a refund, or ship a power supply to Goers.

**B. Allegations regarding Marc Facella.**

8. On or about September 7, 2001, the Defendant entered into a contract with Marc Facella ("Facella") of Quincy, Massachusetts, wherein the Defendant agreed to sell a motherboard and processor to Facella for One Hundred Twenty Dollars and Twenty-Nine Cents (\$120.29).

9. Upon receipt of the order, Facella learned that the motherboard was not as represented by the Defendant, as it did not contain the processor.

10. Facella contacted the Defendant and was instructed by the Defendant to return the product for a refund.

11. The Defendant represented that it would refund the money within a reasonable period of time.

12. The Defendant has yet to either issue a refund, or ship the motherboard and processor to Rutkowski.

**C. Allegations regarding Bebe Thompson.**

13. On or about September 7, 2001, the Defendant entered into a contract with Bebe Thompson ("Thompson") of Cornville, Arizona, wherein the Defendant agreed to sell computer components to Thompson for Four Hundred Eighty-Four Dollars and Thirteen Cents (\$484.13).

14. Upon receipt of the order, Thompson learned that the computer components were defective.

15. Thompson contacted the Defendant and was instructed by the Defendant to return the products for a refund.

16. The Defendant represented that it would refund the money within a reasonable period of time.

17. The Defendant has yet to either issue a refund, or ship working computer components to Thompson.

**D. Allegations regarding Ethan Smith.**

18. On or about October 6, 2001, the Defendant entered into a contract with Ethan Smith ("Smith") of Latham, New York, wherein the Defendant agreed to sell computer components, including what was represented by the Defendant to be PC-2700 memory, to Smith for Two Hundred Sixty-Four Dollars and Fifty-Three Cents (\$264.53).

19. Upon receipt of the order, Smith learned that the computer memory was lesser performing PC-2100 memory, and not PC-2700 memory as represented by the Defendant.

20. The power supply received by Smith was defective and ceased working. Smith contacted the Defendant for repair or replacement of the power supply, as the Defendant represented that product had a one-year warranty.

21. The Defendant has failed to either replace or repair the defective products, or to issue a full refund to Smith.

**E. Allegations regarding Roosevelt Reid.**

22. On or about November 7, 2001, the Defendant entered into a contract with Roosevelt Reid ("Reid") of Varnville, South Carolina, wherein the Defendant agreed to sell a motherboard to Reid for Sixty-One Dollars and Ninety-Nine Cents (\$61.99).

23. Upon receipt of the order, Reid learned that the motherboard was defective.

24. Reid contacted the Defendant and was instructed by the Defendant to return the motherboard for a refund.

25. The Defendant represented that it would refund the money within a reasonable period of time.

26. The Defendant has yet to either issue a refund, or ship a working motherboard to Reid.

**F. Allegations regarding Roger Thureau.**

27. On or about January 27, 2002, the Defendant entered into a contract with Roger Thureau ("Thureau") of Marysville, Ohio, wherein the Defendant agreed to sell Thureau computer components.

28. Among the components purchased by Thureau were a CD-Rom Drive and PC-133 SDRAM computer memory for which Thureau paid a total of Fifty-Eight Dollars (\$58.00).

29. Although the Defendant shipped some of the computer components, it failed to ship the CD-Rom Drive.

30. The Defendant shipped PC-133 DDR computer memory, which was not as represented by the Defendant. The memory was incompatible with the computer system and could not be used, as the computer required SDRAM memory.

31. The Defendant represented that the CD-Rom Drive would be delivered within a reasonable period of time.

32. The Defendant has yet to either issue a refund, or ship the correct components to Thureau.

**G. Allegations regarding Mark Nix.**

33. On or about February 16, 2002, the Defendant entered into a contract with Mark Nix ("Nix") of Taylors, South Carolina, wherein the Defendant agreed to sell Nix computer component kit.

34. The Defendant failed to ship the entire order to Nix, specifically, Nix did not receive a computer case and a memory card, for which Nix paid Sixty (\$60.00) Dollars.

35. The motherboard that Nix received was not the motherboard represented by the Defendant as being included with the component kit.

36. The Defendant represented that the entire order would be shipped within a reasonable period of time.

37. The Defendant has yet to either issue a refund, or ship the components to Nix.

**H. Allegations regarding Vesnelle Rorris.**

38. On or about February 25, 2002, the Defendant entered into a contract with Vesnelle Rorris ("Rorris") of Burley, Idaho, wherein the Defendant agreed to sell Rorris computer components.

39. The Defendant represented that the entire order would be shipped within a reasonable period of time.

40. The Defendant failed to ship the entire order to Nix, specifically, Nix did not receive a stick of computer memory for which Nix paid Five Hundred and Sixty-Nine Dollars (\$569.00).

41. The Defendant has yet to either issue a refund, or ship the computer memory to Rorris.

**I. Allegations regarding Jelena Perfiljeva.**

42. On or about March 14, 2002, the Defendant entered into a contract with Jelena Perfiljeva ("Perfiljeva") of Hopkins, Minnesota, wherein the Defendant agreed to sell Perfiljeva computer components.

43. The Defendant failed to ship the entire order to Perfiljeva, including components for which Perfiljeva paid One Hundred Forty-Seven Dollars and Eighty-Eight Cents (\$147.88).

44. The motherboard that Perfiljeva received was not as represented by the Defendant, as it did not have a RAID controller.

45. The Defendant represented that the balance of the order would be shipped within a reasonable period of time.

46. The Defendant has yet to either issue a refund, or ship the components to Perfiljeva.

**J. Allegations regarding William Naramore.**

47. On or about April 9, 2002, the Defendant entered into a contract with William Naramore ("Naramore") of Evans Mills, New York, wherein the Defendant agreed to sell Naramore computer components.

48. The Defendant represented that the entire order would be shipped within a reasonable period of time.

49. The Defendant failed to ship the entire order to Naramore, specifically; Naramore did not receive a motherboard and fan for which Naramore paid One Hundred Twenty-Five Dollars (\$125.00).

50. The Defendant has yet to either issue a refund, or ship the remaining components to Naramore.

**K. Allegations regarding Patrick Kelley.**

51. On or about April 9, 2002, the Defendant entered into a contract with Patrick Kelley ("Kelley") of Tipp City, Ohio, wherein the Defendant agreed to sell Kelley computer components.

52. The Defendant represented that the entire order would be shipped within a reasonable period of time.

53. The Defendant failed to ship the entire order to Kelley, specifically; Kelley did not receive three (3) computer cases for which Kelley paid One Hundred and Nineteen Dollars and Ninety-Seven Cents (\$119.97).

54. The Defendant has yet to either issue a refund, or ship the remaining components to Kelley.

**COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

55. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 54 above.

56. The transactions referred to in paragraphs 4, 8, 13, 18, 22, 27, 33, 38, 42, 47, and 51, are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

57. The Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

58. The Defendant's representations to consumers that the subject of the consumer transactions had performance, characteristics, uses, or benefits it did not have, when the Defendant knew or reasonably should have known that it did not possess such, as referenced in paragraphs 9, 19, 30, 35, and 44, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(1).

59. The Defendant's representations to consumers of the that they were entitled to refunds and would receive such, when the Defendant knew or reasonably should have known that it would did not provide such, as referenced in paragraphs 6, 11, 16, and 25, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(1).

60. The Defendant's representations to consumers that the subject of the consumer transactions was of a particular standard, quality, grade, style, or model, that it was not, when the Defendant knew or reasonably should have known that it was not, as referenced in paragraphs 19 and 30, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(2).

61. The Defendant's representation to consumers that the consumer transaction involved a warranty, or other rights, remedies, or obligations, when the representation was false and the Defendant knew or reasonably should have known that it was false, as referenced in paragraph 20, is a violation of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(8).

62. The Defendant's representations to consumers that the Defendant would be able to deliver the computer components or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should



have known that it would not, as referenced in paragraphs 6, 11, 16, 25, 31, 36, 39, 45, 48, and 52, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(10).

63. The Defendant's representations to consumers that the consumers would be able to purchase the subject of a consumer transaction as advertised by the Defendant, when the Defendant knew or reasonably should have known that it did not intend to sell the advertised product, as referenced in paragraphs 9, 30, 35, and 44, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(11).

**COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF  
THE DECEPTIVE CONSUMER SALES ACT**

64. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-62 above.

65. The misrepresentations and deceptive acts set forth in paragraphs 6, 9, 11, 16, 19, 20, 25, 30, 31, 35, 36, 39, 40, 44, 45, 48, and 52, were committed by the Defendant with knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Ability Computers, Inc., for a permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;
- b. representing expressly or by implication that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the Defendant knows or reasonably should know it is not;

c. representing expressly or by implication that the consumer transaction involves a warranty, or other rights, remedies, or obligations, if the representation is false and if the supplier knows or should reasonably know that the representation is false;

d. representing expressly or by implication that the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know that it can not;

e. representing expressly or by implication that a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to the persons identified in paragraphs 8, 13, 18, and 22, pursuant to Ind. Code §24-5-0.5-4(d);

b. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of the Defendant's items via the Internet, including but not limited to, the persons identified in paragraphs 4, 8, 13, 18, 22, 27, 33, 38, 42, 47, and 51, in an amount to be determined at trial;

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

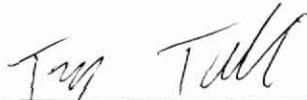
e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

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By:

  
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